

REMARKS

The present application was filed on July 17, 2003 with claims 1-67. Claims 3, 5-14, 19-23, 30-54 and 62-67 have been canceled without prejudice. Claims 1, 2, 4, 15-18, 24-29 and 55-61 are pending, and claims 1, 55 and 59-61 are the pending independent claims.

In the outstanding Office Action, the Examiner: (i) rejected claim 60 under 35 U.S.C. §101; (ii) rejected claims 59 and 61 under 35 U.S.C. §112, second paragraph; and (iii) rejected claim 59 under 35 U.S.C. §102(b) as being anticipated by U.S. Patent No. 5,594,796 to Grube et al. (hereinafter "Grube"). Applicant hereby respectfully requests reconsideration of the present application in view of the foregoing and amendment and the following remarks.

With regard to the rejection of claim 60 under 35 U.S.C. §101, Applicant has amended claim 60 to more clearly recite statutory subject matter. More specifically, independent claim 60 has been amended to recite a computer program product stored on a computer readable medium for operating a four party payment protocol in accordance with a gateway associated with an issuing bank. Accordingly, withdrawal of the rejection of claim 60 under 35 U.S.C. §101 is therefore respectfully requested.

With regard to the rejection of claims 59 and 61 under 35 U.S.C. §112, second paragraph, Applicant has amended claims 59 and 61 to more clearly point out and distinctly claim the subject matter which Applicant regards as the invention. More specifically, independent claim 59 has been amended to recite that the processor is operative to receive and verify. Further, The Examiner cites of IPXL Holdings LLC v. Amazon.com Inc., 77 USPQ2d 1140, in order to provide support that independent claim 59 is indefinite for reciting both an apparatus and method. However, the holding of IPXL is specific to a dependent claim which attempts to incorporate a method of using the system of the independent claim. Applicants respectfully assert that the holding of IPXL does not apply to independent claim 59 in its current form. Independent claim 59 is clearly an independent apparatus claim that is sufficiently precise to provide competitors with an accurate determination of protection involved. Finally, independent claim 61 has been amended to recite that the merchant message is sent to a gateway associated with an issuing bank. Accordingly, withdrawal of the rejection of claims 59 and 61 under 35 U.S.C. §112, second paragraph, is therefore respectfully requested.

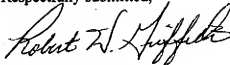
With regard to the rejection of claim 59 under 35 U.S.C. §102(b) as being anticipated by Grube, Applicant respectfully asserts that Grube fails to teach or suggest each and every element recited in claim 59.

It is well-established law that “[a] claim is anticipated only if each and every element as set forth in the claims is found, either expressly or inherently described, in a single prior art reference.” See, e.g., *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 U.S.P.Q.2d 1051, 1053 (Fed. Cir. 1987). See also, M.P.E.P. §2131. Applicant asserts that the §102(b) rejection of claim 59 based on Grube clearly fails to meet the above legal requirements for anticipation. Support for this assertion follows.

The Examiner contends that Grube teaches an apparatus for use in a gateway comprising a memory and a processor coupled to the memory, however, Grube fails to disclose that such a processor is operative to receive information associated with the consumer computer and a message associated with a computer of a merchant with which the consumer computer is engaging in a transaction, receive a reference number, verify an account of the consumer and ensure that at least one of funds and credit support the payment amount, and authorize payment by sending an authorization token. Accordingly, withdrawal of the rejection of claim 59 under 35 U.S.C. §102(b) is therefore respectfully requested.

In view of the above, Applicant believes that claims 1, 2, 4, 15-18, 24-29 and 55-61 are in condition for allowance, and respectfully requests withdrawal of the §101, §112 and §102(b) rejections.

Respectfully submitted,



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